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ABSTRACT

This study had two purposes. The primary purpose was to determine the current legal status of pregnant students in the public schools in the fifty states in 1972. The secondary purpose was to examine implications of the findings for administrators faced with this student problem. The design of the study included a combination of the following research methods: historical, legal, survey and comparative. The results of the study indicated that restrictive attitudes toward sex and pregnancy continue to exert considerable influence on student personnel policies of the public school. It was also evident that the total number of school-age girls desiring to complete their education was increasing. The following implications drawn from the findings were offered to school administrators: (1) some repressive attitudes toward sex continue to be harbored; (2) the increasing number of pregnant students demanding an education will mandate that formalized procedures be evolved for their education; (3) in the common law, pregnant students have the constitutional right to an education; (4) discrimination based on sex, motherhood, pregnancy are subject; etc. (Author/WS)

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THE PREGNANT PUBLIC SCHOOL STUDENT: LEGAL IMPLICATIONS FOR SCHOOL ADMINISTRATORS

by ROBERT D. CHILDS

(Note: This is a report of a study conducted at the University of Denver in 1972)

THE PROBLEM AND ORGANIZATION OF THE STUDY

The Problem

Research indicated the number of pregnant students in the public schools of the fifty states was increasing. In 1970, one source estimated that 200,000 American girls under 18 became pregnant.[1] Another source stated than an estimated 150,000 unmarried teenage girls would become pregnant each year, and there would be an annual increase of 30,000 teenage pregnancies nationwide.[2]

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All state constitutions provide that juveniles had a right to attendance in a "uniform" system of public instruction at state expense. In fact, under compulsory attendance laws juveniles were required to be in school during certain periods of their lives. It seemed reasonable to assume that a pregnant student might stand in as much, if indeed not

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[1] "Pregnant Teen-Agers," Today's Education, 59:28, October, 1970.

Ted W. Gray, "The Teenage Parent: An Educational and Social Crisis, "Kappan, 52:113, October, 1970.

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more, need of an education than the student who was not pregnant. Yet, traditionally, a student who became pregnant was summarily expelled from school. The common solution to the pregnant student had been either no education at all or homebound instruction by a visiting teacher. In 1970, American School Board Journal reported that scarcely one out of three school districts made any educational provisions for pregnant girls. Of the 17,000 school districts in the study, only 5,450 provided for the continuing education of school-age pregnant girls despite the fact that state funds were available.[3]

Pregnancy was the largest known cause of dropouts among secondary school girls. Withdrawal from school could frustrate a girl's future hopes and plans, greatly affect her earning power when and if she entered the working force and leave her with a feeling that both school authorities and fellow students had rejected her.[4]

A major social and educational crisis which could not long be ignored by school administrators existed as a result of teenage pregnancies. With the increase in teenage pregnancies in the sixties, the lower median age for marriage and pregnancy and the emphasis placed on receiving an education, the concern grew for the welfare of these young people as well as their associates.

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[3]Francis Wurtz and Geraldine Fergen, "Boards Still Duck," American School Board Journal, 147:22-4, April, 1970.

[4]Today's Education, p.27

Statement of the Problem

The study had two purposes. The primary purpose was to determine the current legal status of pregnant students in the public schools of the fifty states in 1972. The secondary purpose was to examine implications of the findings for school administrators faced with this student personnel problem.

The following five questions were posed to aid in the research and organization of the study:

1. What has been the historical background of issues regarding the attitudes toward, and the rights of, pregnant students in the public schools?

2. What state statutes existed at the time of the study which made specific reference to pregnant public school students?

3. What common law principles have been utilized in court decisions involving pregnant public school students?

4. What practices were employed in the administration of pregnant public school students in two representative western states?

5. What conclusions and implications can be drawn from the findings to guide school administrators when dealing with pregnant students?

Method of Procedure

The design of the study included a combination of research methods: (1) historical; (2) legal; (3) survey; and (4) comparative. The procedure for investigating the problem was accomplished in four steps: Step 1 included the development of the historical setting with emphasis placed on the traditional and emerging perspectives on problem-related issues. Step 2 included a review of substantive law and common law decisions affecting pregnant students. Step 3 included the determination of practices employed in the administration of pregnant students in two representative western states. Step 4 included the findings, conclusions and discussion of implications arising from the study.

Justification for the Study

Four important reasons were found to justify the study of the current legal status of pregnant students in the public schools. These reasons were as follows: (1) there was a lack of available research findings to guide school officials in dealing with pregnant students; (2) there was a growing trend toward pregnancy in younger adolescents than previously; (3) there was a broadening of the constitutional in-school rights of students which included a demand for equal educational opportunity; and (4) there was a comparatively large number of pregnant students.

HISTORICAL PERSPECTIVE ON THE PROBLEM

The church, from its beginning, felt obligated to control the moral life of man. Man's nature was seen as evil and wicked, hence the church created laws to guide the lives of its people.

The church taught that the flesh was not to be trusted. Adultery, forbidden by the seventh commandment, was a punishable act.

The Medieval Church taught that original sin made it necessary for all men to seek help in living the good life. The Puritans, like the Calvinists, enforced the commands of the church and investigated the moral lives of its people. Sinners were not allowed to run freely while Puritans actively sought the virtues of self-denial and delayed gratifications. The punishment for immorality was grave with women being publicly punished and shamed.

In the latter half of the twentieth century an increasing number of pregnant teenage girls and wed and unwed teenage mothers was evident, many of whom were enrolled in the public schools. The emergence of sexual freedom, liberalized abortion laws, birth control devices, and increased pre-marital sex were greatly affecting the earlier societal attitudes.

Rousseau's natural law of human nature had greatly influenced social and educational practices. The belief in the essential equality and dignity of all men was seen at the foundation of the American Revolution. Constitutional guarantees of freedoms facilitated challenges to charges of deprivation of individual rights but state regulatory functions were seen to have neutralized individual determination through exercise of the police power and <u>in loco parentis</u> concepts.

After 1940, a solicitous view of individual rights on the part of the Supreme Court emerged from the incorporation of the Bill of Rights within the periphery of the Fourteenth Amendment.

Recent controversies questioned the efficacy of traditional procedures in the area of student control and the primacy of the right to an education. Students achieved consideration as citizens in light of the Fourteenth Amendment.

Historically, American law attempted to achieve a reasonable balance between the rights of the state to protect its own welfare and that of its citizens, and the rights of the individuals to choose freely in determining their own destiny. Court decisions in the 1960's indicated that the balance was swinging to the side of the individual, where previously the balance clearly leaned toward the state.

CURRENT LEGAL STATUS OF PREGNANT STUDENTS

The legal status of the pregnant public school student was summarized in three categories: (1) education: a fundamental right; (2) statutory law status; and (3) common law status.

Education: A Fundamental Right

To determine whether or not education was a fundamental right common law decisions regarding this constitutional issue were reviewed. Education was recognized as a prime responsibility of the state in most common law cases. The public school student's right to an education was viewed as coming under the constitutional protection of the Fourteenth Amendment. It was clearly established by the Supreme Court that when unreasonable, capricious, arbitrary rules not based in fact were used to deprive a person of an education, the equal protection and the due process clauses of the Fourteenth Amendment were violated.

Education was deemed so fundamental that it was made compulsory for at least ten years of a child's life in all but three states. Courts viewed education as "essential in maintaining democracy," as "universally relevant," and "the pivotal position to success in society." Thus, education was seen as the lifeline of both the individual and society.

Statutory Law Status

The current statutory law status of the pregnant public school student was determined by a search of the state statutes of the fifty states. It was found that seven states made specific statutory provision for the administration of pregnant students. Although some of these statutes contained unique provisions, all statutes contained a provision which specifically required districts to provide educational opportunities to pregnant students. The educational opportunity could consist of alternative

educational programs, such as special classes and homebound instruction, providing that these programs were equal to, or better than, educational programs available to other children within the district.

Common Law Status

A review of common law cases revealed that only one decision upheld a board policy excluding pregnant students from the public school. This case was based not upon the issue of the student's right to an education, but upon the discretionary power of the school board to act. This case provided judicial precedent for denying a pregnant married student of compulsory school age the right to attend public school, but was not as decisive as might have been desired.

Challenges to board policies excluding pregnant students centered upon the constitutional guarantees of the right to association, the right to privacy, and the right to due process and equal protection of the laws. The courts viewed exclusion from the public schools as a deprivation of a fundamental right. Although it was clearly established that school boards had the authority to promulgate policies controlling conduct of students, these policies could not be capricious, arbitrary or unreasonable. The extent of constitutional rights guaranteed to students was no longer solely a function of school officials' ability to find any reasonable justification for their policies. Common law dictated that disruption in the educational process must have

occurred before a pregnant student could be deprived of an educational right.

The presumption that out-of-wedlock pregnancy was proof of immoral character, the assumption that teenage mothers posed a disruptive threat to school operations, and the contention that pregnant students caused moral contamination of other students were all struck down by the courts. Also, the long held belief, and acceptance of, a double standard of sex, with one set of rules for males and another for females, had been specifically challenged and declared unconstitutional by the courts. Classifying students on the basis of sex alone was seen as a violation of the Civil Rights Act of 1964.

Later common law decisions clearly established that pregnant students and mothers, whether wed or unwed, had a constitutional right to continue attending school. The reasoning in most cases led to the decision that deprivation of the right to an education was a violation of the equal protection clause of the Fourteenth Amendment. Furthermore, exclusions from school, without hearings, were seen as violations of the due process clause of the Fourteenth Amendment. Finally, courts took the position that a child who was of licentious or immoral character could be refused admission to school, but in such cases the burden of proof of immoral character rested with the board.

REPORT OF THE FINDINGS AND CONCLUSIONS

The findings and conclusions of the study were combined and presented under three headings: (1) historical development; (2) legal status; and (3) practices employed in two representative western states.

Historical Development

In America, as in Europe, the ancient moral code, religious in origin, was the same--sexual intercourse was prohibited outside of marriage. Nineteenth-century civilized morality added prudery to virtue, cloaking sexuality in reticence and requiring that women remain ignorant of their sexual role until marriage. Americans required purity of thought in addition to insisting that continence was supremely important. Thus, in the past, social mores dictated that sex and pregnancy were topics to be hushed up and forgotten. Although over time an increasing number of individuals and institutions were unwilling to hide these topics from public discourse, the conclusion seemed clear that restrictive attitudes toward sex and pregnancy continued to exert considerable influence on the written pupil personnel policies of the public schools at the time of the study.

Although the rate of motherhood among the 14 to 19 year old group was not increasing percentagewise, the raw number of births in this group continued to increase due to the overall increase in that age group. Further, in the late 1960's, many twelve and thirteen year olds were involved. More and more girls, married and unmarried, refused to hide their pregnancies, refused to give up their children, and refused to be denied the right to an education. Were the trend to continue at the same rate as that of the 1960's, the conclusion seemed clear that the number of pregnant school-age girls who desired to complete their educations would continue to increase.

Legal Status of the Pregnant Student

In the cases at bar, courts held unanimously that local school boards had a wide area of discretion in adopting rules and regulations for the government of schools. On the other hand, the importance of education had been clearly established by common law as a "fundamental interest." Consequently, courts held that education was a basic constitutional right, an unalienable right, not a privilege. The extent of constitutional rights guaranteed to students was no longer solely dependent upon school officials' ability to find a reasonable justification for their policies. Exclusion from school was considered a deprivation of a personal right or liberty which came under the protection of the Fourteenth Amendment. The conclusion seemed justified that the legal status

of the pregnant student included the right to an education, a fundamental interest and unalienable right of which she could not be deprived unless an overriding public purpose to be served could be demonstrated by the state officials.

Although cases involving the right of pregnant students and school-age mothers to attend school were limited in number, litigation in this area was increasing with the rise in civil rights legislation, the increased demand for equal educational opportunities, and the student rights movement. Common law, in addition to the Civil Rights Act of 1964, specified that classifications based upon sex alone were discriminatory and thus unlawful. The conclusion seemed justified that courts would continue to invalidate board policies which operated on a double standard by excluding girls on the basis of pregnancy, sex or motherhood, but allowing boys who fathered children to continue school.

Where courts previously had upheld the authority of boards to promulgate policies controlling the conduct of students, common law now dictated that proof of disruption in the educational process, immoral conduct, or a clear and present danger to the health, welfare or morals of other students must exist before a pregnant student could be deprived of an educational right. The conclusion seemed apparent that pregnant students could be excluded from school if authorities carried the burden of proof by showing that the student was immoral, caused disruption in the school operation, or presented a clear and present danger to the health, welfare or morals of other students.

The rights of pregnant students have developed almost entirely from common law. Legislative action in this area has been lacking and it was found that statutes providing for the administration of pregnant students existed in only seven states. In the absence of a significant statutory base, rights of pregnant students could be determined only by judicial interpretation. The conclusion seemed clear that the legal status of pregnant students would continue to be determined by common law, unless and until express rights were enumerated through legislative action.

Practices in Two Representative Western States

It was found that Arizona statutes classified pregnant students as handicapped and specified the type of education that should be provided to them. Colorado districts were not provided with any specific statutory guidance regarding the education of pregnant students. However, questionnaire findings showed that practices employed in the administration of pregnant students varied to a great degree in districts of both states. This indicated that administration of pregnant students was a matter generally handled by local school boards. The conclusion seemed evident that the presence of statutory provisions in Arizona, regarding the treatment of pregnant students, had little, if any, influence upon actual practices employed by local districts.

Although a wide range of policies dealing with pregnant students existed in both states, district size was of major importance in determining whether school districts had written policies in this area. The large districts in both states were more likely to have been confronted with this problem than smaller

districts, and thus required to take some type of action to remedy the situation. In some instances, hasty action was evident judging by the policies being utilized. Educational provisions often classified pregnant students as physically or educationally handicapped and state funds were provided for their education, while other districts provided a basic education to these students, but excluded them from extracurricular activities including public graduation ceremonies. Larger districts were being forced to deal with the pregnancy problem and were employing a multitude of approaches to alleviate this problem. The conclusion seemed apparent that large districts in Colorado and Arizona were in a transitional stage of solving the pregnancy problem. The final solution to this problem had not yet been agreed upon.

Medium size districts had a tendency to utilize approaches similar to those employed by large districts although the magnitude of the problem in these districts was not so compelling as to necessitate immediate action. The conclusion seemed apparent that medium size districts recognized the problem and were taking preliminary steps to resolve the pregnancy issue but had not reached a permanent solution at the time of the study.

Smaller districts had far fewer incidents of pregnancy with frequent reports that pregnancy had never been a problem. Smaller districts also reported that due to the limited and infrequent number of pregnancies each case could be handled on an individual basis. In light of these circumstances, many small districts had not felt impelled to formulate written policies regarding pregnant students. The conclusion seemed apparent that although small

districts did not consider student pregnancy a critical issue, administrators in these districts might expect to face this legal issue at any time.

IMPLICATIONS OF THE STUDY

As a result of insights gained in the study, a discussion of the implications of the findings and conclusions was offered to school administrators. The implications were discussed under the following headings: (1) historical; (2) legal; and (3) procedural.

Historical

School administrators will not be surprised to find that some civic organizations, as well as individual citizens, are unwilling to accept the idea of pregnant students being permitted to attend the public schools. Although societal attitudes and practices are changing, administrators might well be aware that some members of the community continue to harbor puritanical, suppressive and repressive feelings toward sex and the new morality. The stigma surrounding teenage pregnancies and unwed mothers continues to persist as a perenial problem.

However, despite societal attitudes and community pressure to exclude pregnant students, administrators might be cognizant of the increasing number of these students and the district's responsibility to educate them. The growing number of these students desiring to continue their education will mandate that administrators formulate procedures to educate these students.

Legal

The right of a student to an equal educational opportunity has now been legally established. Pregnant students, as well as teenage mothers, cannot be denied this constitutional right. School authorities must acknowledge this right and refrain from imposing upon students archaic standards of morality which violate their individual rights, consequently inviting litigation. Administrative policies which continue to exclude students from school solely on the basis of sex, motherhood, or pregnancy alone are suspect. Practices which classified citizens on the basis of sex were specifically prohibited by the Civil Rights Act of 1964. Thus, the double standard which long discriminated between male and female was declared unconstitutional.

Legally, pregnant students and school-age mothers may be temporarily excluded from school when a doctor's recommendation is provided stating that the temporary exclusion is based on the welfare of the mother and/or her child. School authorities must be aware of common law decisions dictating that disruption in the educational process must have occurred before a pregnant student can be deprived of an educational right. Furthermore, courts have stated that before students can be even temporarily excluded from school, an overriding public purpose must be shown by the school officials. Administrators will also note that in such cases the burden of proof rests with the board. In all dismissal cases, the Fourteenth Amendment mandates that students must be afforded due process rights.

School authorities are charged with a difficult task in balancing the scales of justice. In order to protect both state interests on the one hand, and individual rights on the other, courts require that actions school officials take must demonstrate substantial relationship to student health, safety and welfare, and be neither discriminatory in action nor violative of student constitutional rights.

Procedural

Administrators will be forced to change their policies regarding the treatment of pregnant students in light of changing societal values and common law decisions viewing students as "persons" under the constitution. Policies and regulations that are unreasonable, or based upon arbitrary standards which violate students' constitutionally protected rights, will be invalidated by the courts. Accordingly, these court actions might prompt school administrators to liberalize outdated policies on pregnant students. New policies will necessarily be flexible so that each case may be individually judged upon its own unique circumstances. Blanket policies, excluding pregnant students, would be declared unconstitutional by the courts. To avoid later conflicts and court suits, policies should be written and available to students in a handbook of school rules and regulations. Liberalization of policies providing for the rights of pregnant students is virtually mandated for avoidance of unnecessary litigation.

Administrators would do well to examine the legal alternatives available to local school districts to educate pregnant

students. Courts would probably not question the legality of any program if a student's enrollment was voluntary, and if educational opportunities provided for these students were equal to, or better than, those afforded to other students in the district and provided in the best interests of the pregnant student.

Table 1

State Statutory Classification of Pregnant Students and Actions Required of School Districts

State	Citation	Statutory Classification	Date Enacted	Actions Required of Districts
Arizona	section 15-1011(c)	Homebound or Hospitalized	August 11, 1970	Provide educational facilities for pregnant students equal to, or better than, those used to house regular education classes.
Florida	section 232.01	Regular or Special	July 1, 1971	Entitled to same or equivalent educational instruction as other students; may be assigned to special class or program better suited to their special needs.
Idaho	section 33-2006	Handicapped	July 1, 1963	Each district with a state licensed or sponsored system of care for unmarried expectant or delivered mothers shall provide instruction in accredited courses.
Illinois	section 10-22(6a)	Homebound (physically handicapped)	July 20, 1967	Provide home instruction, correspondence courses, or other courses of instruction for pupils unable to attend school because of pregnancy.

Table 1 (Continued)

State	Citation	Statutory Classification	Date Enacted	Actions Required of Districts
Michigan	section 10-22(6a)	Regular or Special	December 30, 1970	Pregnant students cannot involuntarily be excluded from regular classes; district may provide an accredited alternative educational program for pregnant students who voluntarily withdraw from the regular school.
Oregon	section 343 212(2)	Handicapped	Summer 1965	Special education must be provided for children handicapped by being unwed and pregnant or by being unwed mothers of children in their care.
Texas	article 2922-13, section 1(4a)	Exceptional	July 21, 1969	Special education is to be provided to children leaving and not attending public school for a time because of pregnancy.

Table 2

Pregnant Student Cases Classified on Grounds of Challenge and Court Decision

Case and Citation	Plaintiff's Situation	Grounds For Challenge			
		Board Authority	Right to Equal Protection of the Laws	Right to Due Process	Right to an Education
Ohio ex rel Idle v. Chamberlain 175 NE 2d 539 (Ohio, 1961)	married, pregnant	Upheld--Courts will not interfere with school board rules without a showing of an abuse of discretionary power.			
Nutt v. Bd. of Educ. of Goodland 128 Kan 507 278 P 1063 (Kan., 1929)	married, mother	Invalidated--Unreasonable rule, court rejects presumption that out-of-wedlock pregnancy was <u>per se</u> proof of immorality.			

Table 2 (Continued)

Case and Citation	Plaintiff's Situation	Grounds For Challenge			
		Board Authority	Right to Equal Protection of the Laws	Right to Due Process	Right to an Education
Alvin Indep. School District v. Cooper 404 SW 2d 76 (Tex. Civ. App., 1966)	married, mother		Invalidated--School district without authority to exclude a mother from public school when state furnished school funds.		
Perry v. Grenada Municipal Separate School District 300 F. Supp 748 (D.C. Miss., 1969)	unwed, mother			Invalidated--Mothers cannot be excluded from school solely because they are unwed, unless in a fair hearing lack of moral character which could taint others can be proved.	

Table 2 (Continued)

Case and Citation	Plaintiff's Situation	Grounds For Challenge			
		Board Authority	Right to Equal Protection of the Laws	Right to Due Process	Right to an Education
Johnson v. Bd. of Educ. of Borough of Paulsboro Civil Action No. 172-70 (D.C. N.J., 1970)	married, mother		Invalidated--Rule barring parents from participating in extracurricular activities bears no reasonable relationship to legitimate school purposes.		
Ordway v. Hargraves 323 F Supp 1155 (Mass., 1971)	unwed, pregnant				Invalidated--School authorities have not justified limiting or terminating an unwed pregnant student's right to an education.

Table 2 (Continued)

Case and Citation	Plaintiff's Situation	Grounds For Challenge			
		Board Authority	Right to Equal Protection of the Laws	Right to Due Process	Right to an Education
Schmidt v. Bd. of Educ. Mt. Vernon School District R-5, Civil Action No. 2246 (D.C. Missouri, 1971)	married, pregnant		Invalidated--Refusal to enroll plaintiff deprived her of equal educational treatment. The right to an education is a basic personal right.		
Farley v. Reinhart, Civil Action No. 15 569 (D.C. Georgia, 1972)	married, pregnant		Invalidated--Denial of admission as a regular daytime student solely on account of sex or motherhood is a violation of a student's constitutional rights.		